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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,223	04/08/2004	Paul T. Van Gompel	659-2246	9394
757	7590	06/05/2006	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,223

Applicant(s)

VAN GOMPEL, PAUL T.

Examiner

Melanie J. Hand

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed March 10, 2006, with respect to the rejection of claims 1-20 under 35 U.S.C. 103 have been fully considered and are persuasive. The rejection of claims 1-20 has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 6, 8, 12, 14-16, 18, 22 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Pozniak et al (U.S. Patent No. 6,972,012).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

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With respect to **claims 1,8,14**: Pozniak teaches a refastenable absorbent garment comprising a chassis 28, rear waist region 24 (first body panel), front waist region 22 (second body panel), both having side edges 30 (first and second opposite side edges), and crotch portion 26 which extends between and connects the front waist region and rear waist region. Fastener members 62 (at least a first fastening member and a second fastening member) are attached to releasable joints 78 disposed at side edges 30 (i.e. fixedly secured to and extending outboard from said side edges 30 of rear waist region 24 (first body panel)) on outer cover 42. (claim 8) First and second fastener members 62 have fastener ears 68 (carriers) (claim 12) composed of material known in the art (i.e. a tab (claim 13)) that have a refastenable material (refastenable portion) attached thereto. Side panels 48 (first and second extension members) have first side margins 50 at which they are permanently secured to side edges 30 of outer cover 42 in the front waist region (second body panel) and are releasably engagable with the respective first and second fastener members 62.

With respect to **claims 2,15**: Pozniak teaches that the refastenable material of fasteners 62 is hook material. (Col. 17, lines 18,19)

With respect to **claims 3,16**: Pozniak teaches that the attachment panel 66 disposed in the front waist region and on side panels 48 comprises a complimentary loop material to releasably engage the hook material on fasteners 62. (Col. 17, lines 18-21)

With respect to **claims 5,18**: Pozniak teaches that side panels 48 (first and second extension members) are formed from elastomeric materials. (Col. 13, lines 25-27)

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With respect to **claim 6**: Pozniak teaches that fasteners 62 are configured to be extensible or elastic in the lateral direction 40. (Col. 14, lines 31-33)

With respect to **claim 12**: Pozniak teaches that the refastenable material of fasteners 62 is hook material. (Col. 17, lines 18,19)

With respect to **claims 22,24**: Side panels 48 each have an inboard terminal edge and an outboard terminal edge that is spaced laterally outboard of chassis side edges 30. (Fig. 5) Side panels 48 are separate pieces of material bonded to said front waist region. (second body panel)

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4, 7, 9-11, 13, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pozniak et al ('012).

With respect to **claims 4,17**: Pozniak teaches that fasteners 62 have a curved outboard edge but does not teach that side panels 48 (first and second extension members) attached to the second body panel have an outboard curved edge. Pozniak teaches that the outboard edges on fasteners 62 offer a full range of motion to the legs and hips of the user. Therefore since side panels 48 engage fasteners 62 and define a portion of each leg opening when the diaper is secured in use position, it would be obvious to one of ordinary skill in the art to provide a curved

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outboard edge to side panels 48 taught by Pozniak to further ensure a full range of motion for the legs and hips of the user as is also taught by Pozniak. (Fig. 1) (Col. 15, lines 20-29)

With respect to **claims 7,19**: Pozniak does not teach explicitly that side panels 48 (first and second extension members) are attached to a bodyside surface of said rear waist region, however it would be obvious to one of ordinary skill in the art to attach said members to the bodyside surface, as doing so would not destroy the function of said diaper and merely serves as an alternate configuration for the attachment of said side panels.

With respect to **claims 9-11**: Pozniak teaches releasable joints 78 located in both rear (first) and front (second) panels (claim 11), where said side flaps 48 are attached to the front panel chassis 28 or fasteners 62 are attached to the rear panel (first body panel) and also are comprised of releasable bonds 64 which can comprise adhesive (claim 9) or ultrasonic bonds (claim 10).

With respect to **claims 13,20**: Please see the rejection of claim 1 in addition to the following: Pozniak does not explicitly teach that fasteners 62 comprise a pair of tabs, only ears 68 (one on each fastener). However it would be obvious to one of ordinary skill in the art to cut each fastener 62 in half width-wise to provide two ears 68 with fastener material disposed thereon, as two fasteners would distribute tensile forces in the lateral direction to provide a better fit for the user, just as fastener 62 provides an adjustable fit as taught by Pozniak. (Col. 13, lines 33-35)

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pozniak et al ('012) in view of Lovison (U.S. Patent No. 4,022,212).

With respect to **claims 21,23**: Rear region 24 (first body panel) has a first terminal crotch edge adjacent crotch portion 26 and defining a boundary therebetween, front region 22 (second body panel) has a second terminal edge longitudinally spaced from said first terminal crotch edge and adjacent crotch portion 26, and defining a gap area therebetween, and the gap is defined by crotch portion 26.

Pozniak does not teach that said crotch portion overlies said first and second terminal crotch edges. Lovison teaches a hygienic garment assembly comprising a removable crotch portion wherein the longitudinally opposed ends of said crotch portion overlie lower edges 14,16 (first and second terminal crotch edges) of front panel 13 and rear panel 15, respectively. Lovison teaches the crotch portion is comprised of a disposable pad, thus allowing the pad to be replaced and the undergarment to be reused, therefore it would be obvious to one of ordinary skill in the art to modify the crotch portion of the diaper taught by Pozniak such that the longitudinally opposed ends of said portion overlie the terminal crotch edges of said front and rear waist regions so as to be replaceable with a new pad for hygienic benefit while allowing the remainder of the diaper to be reused as taught by Lovison.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISOR / PRIMARY EXAMINER

